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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

HUAWEI TECHNOLOGIES CO., LTD., et al.,

Plaintiffs,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

CASE NO. 16-cv-02787-WHO

**SAMSUNG'S RESPONSE IN
SUPPORT OF ITS NOTICE
REGARDING TENTATIVE RULINGS
FOR AUGUST 15, 2018 HEARING**

SAMSUNG ELECTRONICS CO., LTD. &
SAMSUNG ELECTRONICS AMERICA, INC.,

Counterclaim-Plaintiffs,

v.

HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., HUAWEI
TECHNOLOGIES USA, INC., & HISILICON
TECHNOLOGIES CO., LTD.,

Counterclaim-Defendants.

1 Huawei's Response to Samsung's Notice Regarding Tentative Rulings for August 15,
 2 2018 Hearing (Dkt. 397) ("Response") misconstrues the relevant portions of the Expert Report of
 3 David Lyon, Ph.D. Regarding Noninfringement of U.S. Patent No. 8,724,613 ("Lyon '613
 4 Noninfringement Report"). Huawei's *Daubert* Motion sought to strike Dr. Lyon's opinions
 5 related to his application of the plain and ordinary meaning of "position information." (Dkt. 330
 6 at 3-5.) However, Huawei's request that the Court strike the entirety of the paragraphs it seeks to
 7 strike goes beyond the issue it raised in its *Daubert* Motion—essentially stating that *anything*
 8 related to Dr. Lyon's noninfringement arguments related to "position information" must be struck,
 9 even those unrelated to the claim construction of the term. Huawei's *Daubert* Motion was only
 10 related to Dr. Lyon's application of the plain and ordinary meaning of the term "position
 11 information," and should the Court agree with Huawei, Samsung respectfully requests that it only
 12 strike those opinions that relate to the claim construction of "position information" that the Court
 13 finds incorrect.

14 The paragraphs that Huawei seeks to strike describe in detail the technical differences
 15 between SystemInformationBlockType2 ("SIB2") and SystemInformationBlockType13
 16 ("SIB13"). (Dkt. 396-6 ¶¶ 28, 64, 67, 81, 120, 141-42, 159, 161.) Those paragraphs also contrast
 17 the earlier version of 3GPP TS 36.331 cited by Huawei's expert (v8.4.0), which only included
 18 SIB2, from the later versions of TS 36.331 cited by Dr. Lyon (*e.g.*, v10.0.0), which included both
 19 SIB2 and SIB13. (*Id.* ¶¶ 59, 71, 82, 153.) Dr. Lyon relies on this information to support his
 20 opinion that Huawei has not pointed to enough information to show infringement of the asserted
 21 claims, including the "position information" element. Regardless of how this Court construes
 22 "position information," it is Dr. Lyon's opinion that the fields from SIB2 (unlike the fields from
 23 SIB13) do not provide enough information to identify the subframes that may or may not contain
 24 the service (regardless of whether they actually contain the service or are just reserved to carry the
 25 service). (*See, e.g.*, Dkt. 327-10 ¶¶ 122, 144.)

26 The paragraphs that Huawei seeks to strike also contain information that support Dr.
 27 Lyon's opinions that are *unrelated* to his opinion on "position information," further evidencing the
 28 overbreadth of Huawei's request that goes beyond the issue it raised in its *Daubert* Motion.

1 Huawei's Response incorrectly alleges that the paragraphs it seeks to strike have *no* relevance
 2 other than to Dr. Lyon's opinion on "position information." Not so. By way of example, Dr.
 3 Lyon relies on these paragraphs to support his noninfringement opinions related to the claimed
 4 "time unit." (Ex. B ¶¶ 128-39.) Dr. Lyon opines that the information from SIB2 alleged by Dr.
 5 Akl to be the claimed "time unit" cannot meet that limitation, because it is not consistent with the
 6 plain and ordinary meaning of "time unit" as set forth in the asserted claims.¹ (*Id.*) To support
 7 these opinions, Dr. Lyon relies on his earlier analysis of the differences between the version of TS
 8 36.331 cited by Dr. Akl and the later versions of TS 36.331—the exact same analysis that Huawei
 9 seeks to strike with its *Daubert* Motion. (*See id.* ¶ 133 ("RadioResourceConfigCommon as
 10 defined in TS 36.331 v8.4.0 does not satisfy the claimed 'time unit' as set forth in the claims and
 11 specification. . . . RadioResourceConfigCommon does not relate to MBMS services."); *id.* ¶ 135
 12 ("As I explained above, Release 9 and later sets forth a more complete version of the standard for
 13 setting forth the requirements for MBMS. In Release 9 and later releases, the full scope of the
 14 scheduling mechanisms for MBMS was published.") (emphasis added).) Dr. Lyon also bases his
 15 opinions for "time unit" on the inadequacy of SIB2, stating that the information in SIB2 is
 16 insufficient to infringe the claimed "time unit." (*Id.* ¶ 136.)

17 These earlier portions of the Lyon '613 Noninfringement Report that Huawei seeks to
 18 strike are necessary to understand Dr. Lyon's analysis with respect to "time unit." That is, without
 19 understanding the differences between earlier and later versions of TS 36.331, as well as the
 20 differences between SIB2 and SIB13, one cannot understand the deficiencies in Dr. Akl's opinion
 21 with respect to the "time unit" limitation of the asserted claims. At the very least, the background
 22 information provided in the paragraphs of the Lyon '613 Noninfringement Report that Huawei
 23 seeks to strike are necessary to orient the jury so that they can understand the noninfringement

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 26
 27 ¹ Huawei's *Daubert* Motion did not seek to strike this opinion from the Lyon '613
 28 Noninfringement Report, unlike the opinion on "position information."

1 opinions presented by Dr. Lyon (separate and apart from the opinion on “position information”).²
 2 Accordingly, striking these paragraphs in their entirety would go above and beyond Huawei’s
 3 *Daubert* Motion that was limited to Dr. Lyon’s application of “position information.”

4 In addition, during the August 15, 2018 hearing, Huawei’s counsel presented no argument
 5 or objection in response to Samsung’s counsel notifying the Court of the portions of the Lyon ’613
 6 Noninfringement Report that relate to Dr. Lyon’s application of “position information.” And at no
 7 time, even after Samsung stated that it would file its highlighted Lyon ’613 Noninfringement
 8 Report, did Huawei ask the Court for an opportunity to respond. Accordingly, Huawei’s Response
 9 is inappropriate and untimely. It should therefore be disregarded.

10
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Respectfully Submitted,

12 By: /s/ Victoria F. Maroulis

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 18 *Samsung Electronics America, Inc., and*
 19 *Samsung Research America, Inc.*

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 24 ² Huawei’s Response raises the unfounded concern that Samsung’s highlighting “signals an
 25 intent” to present Dr. Lyon’s “position information” opinion in contravention of the Court’s
 26 possible ruling striking it. Samsung has no such intent. It will abide by whatever the Court
 27 decides. In any event, striking information beyond Dr. Lyon’s “position information” opinion is
 28 not the proper mechanism by which to enforce the Court’s ruling. Such an action would instead
 improperly limit the opinions that Dr. Lyon can offer that are unrelated to Huawei’s *Daubert*
 Motion.